

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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| In re: | Case No. 20-23457-A-7 |
| ERNESTO PATACSIL and MARILYN EMBRY PATACSIL | |
| Debtor. | |
| JOSEPH CABARDO et al., | Adv. No. 20-02167-A |
| Plaintiffs, | FEC-1 |
| V. | |
| ERNESTO PATACSIL et al., | |
| Defendants. | |

MEMORANDUM
(Motion in Limine to Exclude Employee Misconduct)

1 Motion must state with particularity the relief sought. Fed. R.
2 Civ. P. 7007(b)(1)(C). Defendants have lodged the direct written
3 testimony of eight witnesses and ten exhibits. By motion in limine,
4 plaintiffs seek to exclude evidence of "employee misconduct," Fed. R.
5 Evid. 402. But they have not specified which of the declarations
6 and/or other evidence to which they object. Nor have the plaintiffs
7 specified what they mean by "employee misconduct." Should the court
8 grant the motion?

9 **I. FACTS**

10 Prior to the matters that are now before this court eight former
11 employees, acting under the Private Attorney General Act of 2004,
12 brought an action against the defendants in District Court for wage
13 and hours violations arising from their employment. The plaintiff
14 employees prevailed at trial and the District Court awarded them
15 damages of \$893,815 and attorneys' fees of \$1,077,218.

16 Defendants then filed a Chapter 7 bankruptcy.

17 Plaintiff employees and their attorneys in the underlying action
18 filed this adversary proceeding to except the judgment from discharge.
19 11 U.S.C. § 523(a)(6), (a)(7).

20 **II. PROCEDURE**

21 Plaintiffs have filed a motion in limine to exclude "employee
22 misconduct." Mot. in Limine to Exclude Allegations of Employee
23 Misconduct 2:2-3, ECF No. 105. Defendants have filed a reply that
24 offers to strike limited portions of two declarations. Resp., ECF No.
25 140. Oral argument will not be helpful. LBR 9014-1(h); *Morrow v.*
26 *Topping*, 437 F.2d 1155, 1156 (9th Cir. 1971).

27 **III. JURISDICTION**

28 This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b);

1 see also General Order No. 182 of the Eastern District of California.
2 Jurisdiction is core. 28 U.S.C. § 157(b)(2)(I); *Carpenters Pension*
3 *Trust Fund for Northern Calif. v. Moxley*, 734 F.3d 864, 868 (9th
4 2013); *In re Kennedy*, 108 F.3d 1015, 1017 (9th Cir. 1997). Plaintiffs
5 do not consent to the entry of final orders and judgments by this
6 court; defendants do so consent. 28 U.S.C. § 157(b)(3); *Wellness*
7 *Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932, 1945-46 (2015).
8 Scheduling Order § 2.0, ECF No. 13.

9 **IV. LAW**

10 Motions in limine should be granted cautiously.

11 A motion in limine is a request for the court's guidance
12 concerning an evidentiary question. Judges have broad
13 discretion when ruling on motions in limine. However, a
14 motion in limine should not be used to resolve factual
15 disputes or weigh evidence. *To exclude evidence on a motion*
16 *in limine the evidence must be inadmissible on all*
potential grounds. Unless evidence meets this high
standard, evidentiary rulings should be deferred until
trial so that questions of foundation, relevancy and
potential prejudice may be resolved in proper context.

17 *Hays v. Clark County Nev.*, 2008 WL 2372295 *7 (NV 2008) (internal
18 citations and quotation marks omitted) (emphasis added).

19 **V. DISCUSSION**

20 An action to except a debt from discharge has three elements: (1)
21 a debt, *In re Dobos*, 303 B.R. 31, 39 (9th Cir. BAP 2019); *Northbay*
22 *Wellness Group, Inc. v. Beyries*, 789 F.3d 956, 959 n. 3 (9th Cir.
23 2015) (existence of a debt determined by state law); (2) at least one
24 of the enumerated exceptions of § 523(a), i.e., 11 U.S.C. §
25 523(a)(6), (a)(7); and (3) an amount of damages. *Dobos*, 303 B.R. at
26 39. Affirmative defenses exist. *E.g.*, Fed. R. Bankr. P. 4007 (time
27 limitations).

28 Motions must state with particularity the grounds on which the

1 motion is made, and the relief sought.

2 (b) (1) In General. A request for a court order must be made
3 by motion. The motion must:

4 (A) be in writing unless made during a hearing or trial;

5 (B) *state with particularity the grounds for seeking the*
order; and

6 (C) *state the relief sought*.

7 Fed. R. Civ. P. 7, incorporated by Fed. R. Civ. P. 7007 (emphasis
8 added); see also, Fed. R. Bankr. P. 9013; LBR 9014-1(d)(3)(A).

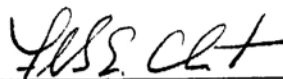
9 "The particularity requirement gives notice to the court and the
10 opposing party, providing the opposing party "a meaningful opportunity
11 to respond and the court with enough information to process the motion
12 correctly." *Hinz v. Neuroscience, Inc.*, 538 F.3d 979, 983 (8th Cir.
13 2008), quoting *Andreas v. Volkswagen of Am., Inc.*, 336 F.3d 789, 793
14 (8th Cir. 2003).

15 Prior to trial the court ordered the parties to submit direct
16 testimony by written submission and to lodge documentary evidence to
17 be offered at trial. Am. Pretrial Order §§ 1.0, 4.0, 5.0, ECF No. 95.
18 Defendants did so, offering eight declarations and ten exhibits.
19 Notwithstanding receipt of this evidence the motion in limine does not
20 "state with particularity" the exhibits or the testimony to which the
21 plaintiffs object. The problem is two-fold. First, the plaintiffs do
22 not identify which declarations or which portions of those
23 declarations are objectionable. Second, without more, the word
24 "misconduct" is vague. Sometimes it means purposely wrongful acts and
25 sometimes it means simply inappropriate acts. Without such an
26 articulation, neither the defendants, nor this court, have a
27 principled way to rule on such an objection.
28

1 **VI. CONCLUSION**

2 For each of these reasons, the motion in limine to exclude
3 evidence of "employee misconduct" is denied. An order will issue from
4 chambers.

5 **Dated:** February 13, 2023

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8 Fredrick E. Clement
9 United States Bankruptcy Judge
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked ☐, via the U.S. mail.

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| Attorneys for the Plaintiff(s) | Attorneys for the Defendant(s) |
| Bankruptcy Trustee (if appointed in the case) | Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814 |